

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

5:06CV11-1-V

5:99CR12-8-V

SHAUN POSTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER comes before the Court for an initial review of Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, filed January 9, 2006.

On September 15, 2000, after a trial by jury, Petitioner was convicted of violating 21 U.S.C. §§ 841 and 846. On March 5, 2001, this Court sentenced Petitioner to 360 months imprisonment and five years of supervised release. The United States Court of Appeals for the Fourth Circuit upheld Petitioner's sentence and conviction in an unpublished opinion filed February 1, 2002. On June 3, 2002, the United States Supreme Court denied Petitioner's petition for writ of certiorari.

On November 3, 2003, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence with this Court (5:03CV143-V). On March 2, 2004, this Court dismissed Petitioner's Motion to Vacate as untimely. On July 23, 2004, the United States Court of Appeals for the Fourth Circuit upheld the denial of his Motion to Vacate. Petitioner has now filed a second motion to vacate, set aside, or correct sentence with this Court.

Under the Antiterrorism and Effective Death Penalty Act (AEDPA), "a second or successive motion must be certified . . . by a panel of the appropriate court of appeals. . ." 28 U.S.C. § 2255 (1997). Therefore, the Petitioner must first certify his claim with the Fourth Circuit Court of Appeals before he can file his successive claim in the District Court.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion to Vacate, Set Aside, or Correct Sentence is **DISMISSED** without prejudice as successive.

Signed: January 24, 2006

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
Chief United States District Judge

